An Roinn Iompair
Turasóireachta agus Spóirt
Department of Transport,
Tourism and Sport

14 March 2019

Mr. Ken Foxe
ken@righttoknow.ie

Re: AIE request

Dear Mr. Foxe,

I refer to your request dated 17 February 2019 made under the European Communities (Access to Information on the Environment) Regulations 2007 to 2018 (SI 133 of 2007, SI 662 of 2011, SI 615 of 2014 and SI 309 of 2018 (hereafter referred to as the AIE Regulations)) for access to records held by the Department of Transport, Tourism and Sport as follows:

- *copies of any reports, memos, submissions, advices, or any other such document prepared for the Minister and/or his private office or the Secretary General and/or his private office regarding possible conflict of interest in appointing Fingal County Council as noise regulator for Dublin Airport.*

- *copies of any records as above relating to the Department submission to appoint Fingal County Council as noise regulator for Dublin Airport.*

I have now made a final decision to partially grant your request. The purpose of this letter is to explain that decision. This explanation has the following parts:

1. A schedule of all of the records covered by your request;
2. An explanation of the relevant findings concerning the records to which access is denied, and
3. A statement of how you can appeal this decision should you wish to do so.

This letter addresses each of these three parts in turn.

1. Schedule of records

A schedule is enclosed with this letter. It shows the documents that the Department of Transport, Tourism and Sport considers relevant to your request. I have identified 28 relevant records in total, 7 of which I am releasing in full,10 of which I am releasing in part and 11 of which I am refusing in full. In relation to the 10 records I am releasing in part, the redacted material is considered outside the scope of the request. However, the material in these 10 records considered within the scope of the request is being released in full.

2. Findings, particulars and reasons for decisions to deny access

I am refusing the release of 11 records in line with Article 8(b) of the AIE Regulations which states that a public authority shall not make available environmental information to the extent that it would involve the disclosure of discussions at one or more

Lána Líosain, Baile Átha Cliath, D02 TR60
Leeson Lane, Dublin, D02 TR60
[redacted]
www.dttas.gov.ie

meetings of the Government. The records involved relate to Memoranda for Government brought forward for discussion at Cabinet meetings, as well as submissions to the Minister summarising the Memoranda, speaking notes and briefing notes to facilitate the Minister at Cabinet meetings.

In applying the public interest test as required under Article 10(3) of the AIE Regulations, I do not believe it is in the public interest to release these documents. As outlined above, the records in question were prepared for consideration by the Cabinet and contain information prepared for the Minister in order for him to conduct business at Cabinet Meetings. Article 28.4.3 of the Irish Constitution provides that the confidentiality of discussions at meetings of the Government shall be respected. In balancing the public interest served by releasing these records against the interest served by refusing these records, in my opinion, the need to maintain the confidentiality of Cabinet meetings to allow the business of the Government to proceed, overrides the public interest.

The records are also being refused in line with Article 8(a)(iv), which states that environmental information shall not be made available where disclosure of the information would adversely affect the confidentiality of the proceedings of public authorities, where such confidentiality is otherwise protected by law (including Freedom of Information Acts with respect to exempt records within the meaning of those Acts). In this regard, Section 28 of the Freedom of Information Act 2014 exempts the release of records which were submitted to Government for its consideration by a Minister of the Government and contains information for a member of the Government for use by him or her solely for the purpose of the transaction of any business of the Government at a meeting of the Government.

3. Right of appeal

Under Article 11 of the AIE Regulations you have the right to seek an internal review of this decision. An internal review involves a complete reconsideration of the matter by a member of staff of this Department of the same or higher rank than the original decision maker, who may affirm, vary or annul the original decision. The review decision will be communicated to you within one month of receipt of your request.

In the event that you wish to make such an internal review, you can do so by writing to the Information Officer, Department of Transport, Tourism and Sport, Leeson Lane, Dublin 2, D02 TR60 or at foi@dttas.gov.ie. You must make your appeal within one month of this notification. However, the making of a late appeal may be permitted in appropriate circumstances.

Yours sincerely,

Bronagh Treacy
Air Navigation, Safety and Security Division

AIE Request - Ken Foxe

Record No	Date	Brief Description	No. of pages	Decision: Grant/Part Grant/Refuse	Basis of refusal: Section of Act	Reason for Decision
1	10.11.17	Briefing note to Minister regarding update on Regulation 598/2014	4	Grant		
2	16.1.18	Submission to Minister detailing overview of Memorandum for Government with copy of Memorandum attached - implementation of EU Reg 598/2014	11	Refuse	Article 8(1)(iv) and Article 8(b)	Involve the disclosure of discussions at meetings of the Government
3	26.01.18	Final Memorandum to Government implementation of EU Reg 598/2014	12	Refuse	Article 8(1)(iv) and Article 8(b)	Involve the disclosure of discussions at meetings of the Government
4	30.01.18	Speaking note for Minister for Cabinet Meeting re Memorandum to Government	3	Refuse	Article 8(1)(iv) and Article 8(b)	Involve the disclosure of discussions at meetings of the Government
5	17.04.18	Briefing note on noise legislation	2	Grant		
6	24.04.18	Supplementary material for Oral PQs	4	Grant		Relevant material granted. Redacted material outside the scope of the request.
7	25.06.18	Project Ireland 2040 Briefing	5	Grant		Relevant material granted. Redacted material outside the scope of the request.
8	21.06.18	Submission to Minister detailing overview of Memorandum for Government - Airport Noise Regulation Bill with four attachments tabbed A to D - detailed below	5	Refuse	Article 8(1)(iv) and Article 8(b)	Involve the disclosure of discussions at meetings of the Government
9		Tab A - Draft Memorandum to Government - attachment to Record 5	4	Refuse	Article 8(1)(iv) and Article 8(b)	Involve the disclosure of discussions at meetings of the Government
10		Tab B - Outline Draft Heads of Bill - attachment to record 5	4	Refuse	Article 8(1)(iv) and Article 8(b)	Involve the disclosure of discussions at meetings of the Government
11		Tab C - Timeline - attachment to record 5	5	Refuse	Article 8(1)(iv) and Article 8(b)	Involve the disclosure of discussions at meetings of the Government
12		Tab D - Memorandum to Government from January - same as record 3 - attachment to record 5	12	Refuse	Article 8(1)(iv) and Article 8(b)	Involve the disclosure of discussions at meetings of the Government
13	29.06.18	Final Memorandum for Government	6	Refuse	Article 8(1)(iv) and Article 8(b)	Involve the disclosure of discussions at meetings of the Government
14	05.07.18	Speaking notes for Cabinet Meeting re Memorandum for Government	3	Refuse	Article 8(1)(iv) and Article 8(b)	Involve the disclosure of discussions at meetings of the Government
15	05.07.18	Q & A briefing for Cabinet Meeting re Memorandum for Government	16	Refuse	Article 8(1)(iv) and Article 8(b)	Involve the disclosure of discussions at meetings of the Government
16	11.07.18	Briefing for appearance before the Joint Oireachtas Committee on Transport, Tourism and Sport	17	Grant		Relevant material granted. Redacted material outside the scope of the request.
17	11.07.18	Q & A briefing appearance before the Joint Oireachtas Committee on Transport, Tourism and Sport	4	Grant		Relevant material granted. Redacted material outside the scope of the request.
18	19.09.18	Supplementary material for Oral PQs	4	Grant		Relevant material granted. Redacted material outside the scope of the request.
19	03.10.18	Briefing for appearance before the Joint Oireachtas Committee on Transport, Tourism and Sport	19	Grant		Relevant material granted. Redacted material outside the scope of the request.
20	03.10.18	Topical issues Q & A briefing for Minister for appearance before the Joint Oireachtas Committee on Transport, Tourism and Sport	13	Grant		Relevant material granted. Redacted material outside the scope of the request.
21	29.11.18	Briefing for public representatives re Fingal County Council as the Competent Authority	3	Grant		

22	29.11.18	Briefing for public representatives re Competent Authority options	3	Grant		
23	12.12.18	General Briefing for Second Stage appearance	52	Grant		Relevant material granted. Redacted material outside the scope of the request.
24	12.12.18	Second Stage Speech	19	Grant		
25	12.12.18	Second Stage - concluding remarks	8	Grant		Relevant material granted. Redacted material outside the scope of the request.
26	16.01.19	Aircraft Noise Bill brefing notes by section	40	Grant		Relevant material granted. Redacted material outside the scope of the request.
27	17.01.19	Briefing note for Secretary General for appearance before the Joint Oireachtas Committee on Corporate Governance Framework	1	Grant		
28	08.02.19	Briefing note for public representatives re Fingal County Council Structures and Governance	2	Grant		

TREACY Bronagh

From:	GALLAGHER Ronan
Sent:	19 February 2018 13:54
To:	TREACY Bronagh
Cc:	KENNY Theresa
Subject:	FW: URGENT Note to Minister - Noise Update
Attachments:	Note to Minister - Noise Update.docx

From: TOWEY Fintan
Sent: Friday 10 November 2017 12:00
To: ROSS Shane
Cc: SMITH Chris; DUNNE Aisling; GALLAGHER Ronan; WHELAN Jason; DOYLE Graham
Subject: URGENT Note to Minister - Noise Update

Minister

We are working on an approach to legislation for noise regulation at Dublin Airport.

The issue remains complicated and there are a number of issues to be teased out. The attached note sets out the position. It will be a number of weeks before we can recommend a clear way forward – and certainly beyond 22 November when the issue is likely to be raised in the Dáil.

Fintan

1. Fintan Towey, A/Secretary
2. Minister, from R Gallagher

Update Briefing: State of Play on Noise Regulation 598/2014

On foot of the legal advices which had the effect of ending the proposal to appoint the IAA as the Competent Authority for the purposes of the Noise Regulation, the Department has been working on securing agreement on an alternative.

The favoured proposal is now to put the responsibilities for Noise Regulation alongside responsibilities for planning – potentially either or both An Bord Pleanála and the Fingal County Council - FCC could have roles.

The Environmental Protection Agency (EPA) was considered (for the role of Competent Authority), and it was deemed a sub-optimal option. The Commission for Aviation Remains a fall-back position should the planning bodies not provide the solution, but our considered view at this stage is that the planning bodies are most likely to be best placed to bring existing expertise to bear and to be able to absorb the role.

Before we can make a final recommendation we need to:

- Deepen discussions with FCC and ABP to ensure that there is clarity around the nature of the role and the expertise required; and
- Get the legal imprimatur of the Attorney General.

We are currently working toward finalising a proposal which can be put to the AGO and Senior Council this month. AGO has been made aware of our plans and has been asked to have SC ready in order that we can have a preliminary legal assessment at the soonest possible opportunity. **It is highly unlikely that we will be in a position to advise of a final course of action – backed up by legal advices - by 22 November.**

Progress

The current proposal is dependent on the DHP&LG and two of its agencies/bodies, each of which has a high level of statutory independence. We have strong buy-in from the DHP&LG, but we are at a delicate stage with regard to bringing FCC on board in the role as possible Competent Authority and ABP as the possible Appeals Body.

We are acutely aware of the time pressures and the need to clarify an implementable approach and move quickly to legislate. We are equally acutely aware of the associated time pressures imposed by the need to proceed with the construction of the North runway by the DAA before the current development consent elapses.

It is imperative, however, another misstep is avoided. Therefore we are making sure that whatever you are advised of next and whatever you decide upon as a course of action, that it is deliverable.

Steps Taken To Date

- **2 October** – The Department met with the DHPLG.

  Discussion of the range of alternative options available on foot of the legal advices re: IAA. Both Departments agreed to examine the potential of An Bord Pleanála, Fingal CoCo and/or Environmental Protection Agency to manage aircraft noise through the 'Balanced Approach' under EU Noise Regulation 598/2014.

  Outcome -urgency was understood. There was a shared understanding of national importance of airport development. Need to find workable solution and identify any difficulties early. No room for further delay. Min/TTaS demand for clear and speedy resolution was acknowledged.

- **9 October** - The Department met with the DHPLG, the Department of Communications, Climate Action and the Environment and the EPA.

  There was extensive discussion of options, timeframes, legal and operational issues around the Noise Regulation. Policy and political urgency was understood. The short timeframe for advising Government was emphasised, as well as the urgency related to procurement timelines associated with 2nd Runway at Dublin.

  Outcome - agreement to pursue option involving one or both of An Bord Pleanála and FCC. EPA excluded as a possible candidate for the Competent Authority for time being in favour of FCC, with ABP as the Appeals Body. Two Departments – DTTaS and DHPLG – to work on drafting joint proposal to send to AGO and Senior Counsel for advices.

- **27 October** – The Department met with the Department of Housing, Planning and Local Government and FCC.

  Extensive discussion on implications – legal and operational – of making FCC the Competent Authority for the purpose of Regulation 598. Inter-relationship with existing planning processes examined. Potential conflict of interest issues raised for further consideration. Issues of capacity and funding also discussed.

  Outcome – agreement that, subject to meeting with ABP and agreement between DTTaS and DHPLG on preferred approach, FCC would stand ready to advise on / contribute to proposal paper for AGO.

FCC has since written to the Department to underscore its concerns about potential conflicts.

Next Steps

The Department is meeting with DHPLG and ABP on 10 November. Arising from that an approach will need to be settled with DHPLG on the best way forward before approaching AGO with a firm proposal.

Airport Noise

Ronan Gallgher ext 1662

Key messages

- The Government has decided that Fingal County Council will be responsible for noise regulation at Dublin Airport.
- Legislation is being drafted and the aim is to bring it to the Oireachtas for pre legislative scrutiny **later this year**. Goal is to **enact the legislation within 12 months, at the very latest**.
- Fingal County Council will be provided with the means to bring in **extra resources** to cope with this extra workload.
- An Bord Pleanála will be the **appeals body**.

Likely angle of attack

- One possible angle of attack maybe that Fingal County Council are not sufficiently competent or may have a conflict of interest as the Competent Authority. This can be addressed using the following points:

    - Fingal County Council already has responsibilities under an EU Environmental Noise Directive which encapsulates responsibilities relating to roads, railways and airports.
    - It has considerable experience and expertise in the conduct of environmental impact assessments and in managing public consultations.
    - Fingal County Council already has a wide range of statutory-based regulatory and enforcement functions in relation to environmental quality, planning, enforcement all which **necessarily** sit alongside its other functions such as rateable income and property tax collection.
    - Assigning Fingal as the airport noise regulator is wholly aligned with that long-established multi-functional role played by all local authorities.
    - Fingal County Council's role and the regulatory process will be open and transparent.

- A further possible angle of attack could be the delay in enacting legislation:

    - There was an earlier proposal to appoint the Irish Aviation Authority as the noise regulator that became impractical, on legal advice.
    - The ruling out of the Irish Aviation Authority as the Competent Authority represented a very late-in-the-day setback. That resulted in a delay to the delivery of the legislation and the development of a revised course of action.
    - Work is ongoing in this Department on the drafting of Heads of a Bill for primary legislation.

Other Background info

- This need for a noise regulator is a requirement of EU law.

- **Fingal County Council will monitor noise pollution.**

- They will consult openly and transparently each time a change is proposed to the noise restrictions. Public consultations will be needed and **local businesses and people living near the airport will have opportunities to contribute** to plans for the operation of the airport.

- A fresh **examination** of the situation will be undertaken **every 5 years**.

- Regarding the **Second Runway at Dublin Airport**. Dublin Airport is of strategic national importance and needs to expand. At the moment, there are noise related operational restrictions in place which were part of the original planning process for the runway. The impact of these restrictions will mean that there will be very limited flights after 11 pm and before 7 am at Dublin Airport.

- daa is on the record as saying that such operating restrictions are incompatible for an expanding airport.

- Under the new airport noise regime which my Department is working on, in accordance with EU Regulation 598/2014, a broader technical noise assessment will be carried out to inform current and future development of Dublin Airport, resulting in the potential application of a much broader set of noise mitigation measures. Under the new EU Regulation, operational restrictions form part of the overall menu of noise arrangement options, but they are to be considered effectively as a last resort.

EU Noise Regulation 598/2014 Supplementary Material PQ 17768/2018 Brendan Ryan TD

Oral PQs 24 April 2018

Why was Fingal County Council chosen?

- Fingal County Council already has responsibilities under an EU Environmental Noise Directive which encapsulates responsibilities relating to noise caused by conurbations and major transport infrastructures including roads, railways and airports. In addition, having regard to its planning functions, it has considerable experience and expertise in the conduct of environmental impact assessments, appropriate assessments and in managing extensive public consultations. There are therefore synergies arising from the assignment of this additional role.

- Once it became clear that the IAA could no longer be designated as the competent authority, an alternative had to be found. Following discussions between my Department, the Department of Housing, Planning and Local Government and the Department of Communications, Climate Change and Environment, it was agreed that on balance - and having regard to the requirements of the EU Regulation - that Fingal County Council offered the best way forward.

- In January this year, the Government approved my proposal to designate Fingal County Council as the Noise Regulator for Dublin Airport with An Bord Pleanála as the appeals body in order that Ireland fully complies with EU Regulation 598/2014, which came into effect in 2016.

Is Fingal County Council conflicted?

- I am aware that concerns have been raised around the designation of Fingal County Council as the Competent Authority, and whether they are independent given the rates they receive from daa. However, when the figures are examined more closely, it is my understanding that the daa rate of demand for 2018 is approximately 15% of the total rates levied by Fingal County Council and represents approximately 8% of Fingal County Council's overall budgeted income. Therefore, I do not accept the claim that Fingal County Council is unduly beholden to daa for its income. Furthermore, the Council will be provided with the appropriate resources to undertake this additional role, ensuring it has the necessary tools to make evidence based decisions in relation to noise mitigation measures and noise related operating restrictions. Therefore, I have every confidence in the suitability and capacity of Fingal County Council to carry out this important role.

[redacted]

NDP/Project Ireland 2040 Minster's Briefing

Airport Noise-North Runway

Monday 25 June 2018

[redacted]

[redacted]

Why was Fingal County Council chosen?

- Once it became clear that the IAA could no longer be designated as the competent authority, an alternative had to be found. Following discussions between my Department, the Department of Housing, Planning and Local Government and the Department of Communications, Climate Change and Environment, it was agreed that on balance - and having regard to the requirements of the EU Regulation - that Fingal County Council offered the best way forward.

- Therefore, in January this year, the Government approved my proposal to designate Fingal County Council as the Noise Regulator for Dublin Airport with An Bord Pleanála as the appeals body in order that Ireland fully complies with EU Regulation 598/2014, which came into effect in 2016.

- Fingal County Council already has responsibilities under an EU Environmental Noise Directive which encapsulates responsibilities relating to noise caused by conurbations and major transport infrastructures including roads, railways and airports. In addition, having regard to its planning functions, it has considerable experience and expertise in the conduct of environmental impact assessments, appropriate assessments and in managing extensive public consultations. There are therefore synergies arising from the assignment of this additional role.

Is Fingal County Council conflicted?

- It is my understanding that daa rates represent approximately 8% of Fingal County Council's overall budgeted income. That is not an insignificant amount, of course, but simply math tells us that it gets 92% of its income from other sources. Many other large and small businesses pay rates, and home owners pay property tax.

- Therefore, I do not accept the claim that Fingal County Council is unduly beholden to daa for its income to the extent that it would be conflicted in making a noise related decision. To suggest otherwise is to bring into question the fundamental principles underlying all local government powers and funding.

- The Council will be provided with the appropriate resources to undertake this additional role, ensuring it has the necessary tools to make evidence based decisions in relation to noise mitigation measures and noise related operating

restrictions. Therefore, I have every confidence in the suitability and capacity of Fingal County Council to carry out this important role.

[redacted]

Joint Committee on Transport, Tourism and Sport

Wednesday, 11 July 2018

Briefing

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

7.2. Why was Fingal County Council chosen?

- Fingal County Council offered the best way forward, following discussions between this Department, the Department of Housing, Planning and Local Government and the Department of Communications, Climate Change and Environment, having regard to the requirements of Regulation 598.

- Fingal County Council already has responsibilities under an EU Environmental Noise Directive which encapsulates responsibilities relating to noise caused by conurbations and major transport infrastructures including roads, railways and airports.

- In addition, having regard to its planning functions, it has considerable experience and expertise in the conduct of environmental impact assessments, appropriate assessments and in managing extensive public consultations. There are therefore synergies arising from the assignment of this additional role.

7.3. Is Fingal County Council conflicted?

- The daa rates represent approximately 8% of Fingal County Council's overall budgeted income.

- The Council will be provided with the appropriate resources to undertake this additional role, ensuring it has the necessary tools to make evidence based decisions in relation to noise mitigation measures and noise related operating restrictions.

- Local Authorities already have a wide range of statutory based regulatory and enforcement functions. These relate to both the environment and planning and sit alongside their rate collection and property tax setting functions.

[redacted]

[redacted]

[redacted]

2. Who will be the noise regulator?

- Fingal Country Council will be the Dublin Airport noise regulator.
- An Bord Pleanála will be appointed as the Appeals Body.

3. Why was Fingal County Council chosen?

- Fingal County Council offered the best way forward, having regard to the requirements of Regulation 598 and following cross-departmental consideration.
- Fingal County Council already has responsibilities under an EU Environmental Noise Directive2002/49/EC which encapsulates responsibilities relating to noise caused by conurbations and major transport infrastructures including roads, railways and airports.
- In addition, having regard to its planning functions, it has considerable experience and expertise in the conduct of environmental impact assessments, appropriate assessments and in managing extensive public consultations. There are therefore synergies arising from the assignment of this additional role.

4. **Is Fingal County Council conflicted?**
    - Local Authorities already have a wide range of statutory based regulatory and enforcement functions. These relate to both their environment and planning roles and sit alongside their rate collection and property tax setting functions.
    - It is not reasonable to assert that the exercise of regulatory roles by local authorities might be in some way compromised by their sources of funding.
    - Many regulatory bodies are funded by the regulated entity in the form of a levy or charge on that entity.
    - Fingal County Council will be provided with the appropriate resources to undertake this additional role, ensuring it has the necessary tools to make evidence based, transparent decisions in relation to noise mitigation measures and noise related operating restrictions.

[redacted]

[redacted]

EU Noise Regulation 598/2014 Supplementary Material PQ 37715/2018 Clare Daly TD

Oral PQs 19 September 2018

[redacted]

[redacted]

Why was Fingal County Council chosen?

As I explained to the Joint Oireachtas Committee in July, Fingal County Council already has responsibilities under an EU Environmental Noise Directive which encapsulates responsibilities relating to noise caused by conurbations and major transport infrastructures including roads, railways and airports. In addition, having regard to its planning functions, it has considerable experience and expertise in the conduct of environmental impact assessments, appropriate assessments and in managing extensive public consultations. There are therefore synergies arising from the assignment of this additional role.

Is Fingal County Council conflicted?

I am aware that concerns have been raised around the designation of Fingal County Council as the Competent Authority, and whether they are independent given the rates they receive from daa. However, when the figures are examined more closely, it is my understanding that the daa rate of demand for 2018 is approximately 15% of the total

rates levied by Fingal County Council and represents approximately 8% of Fingal County Council's overall budgeted income.

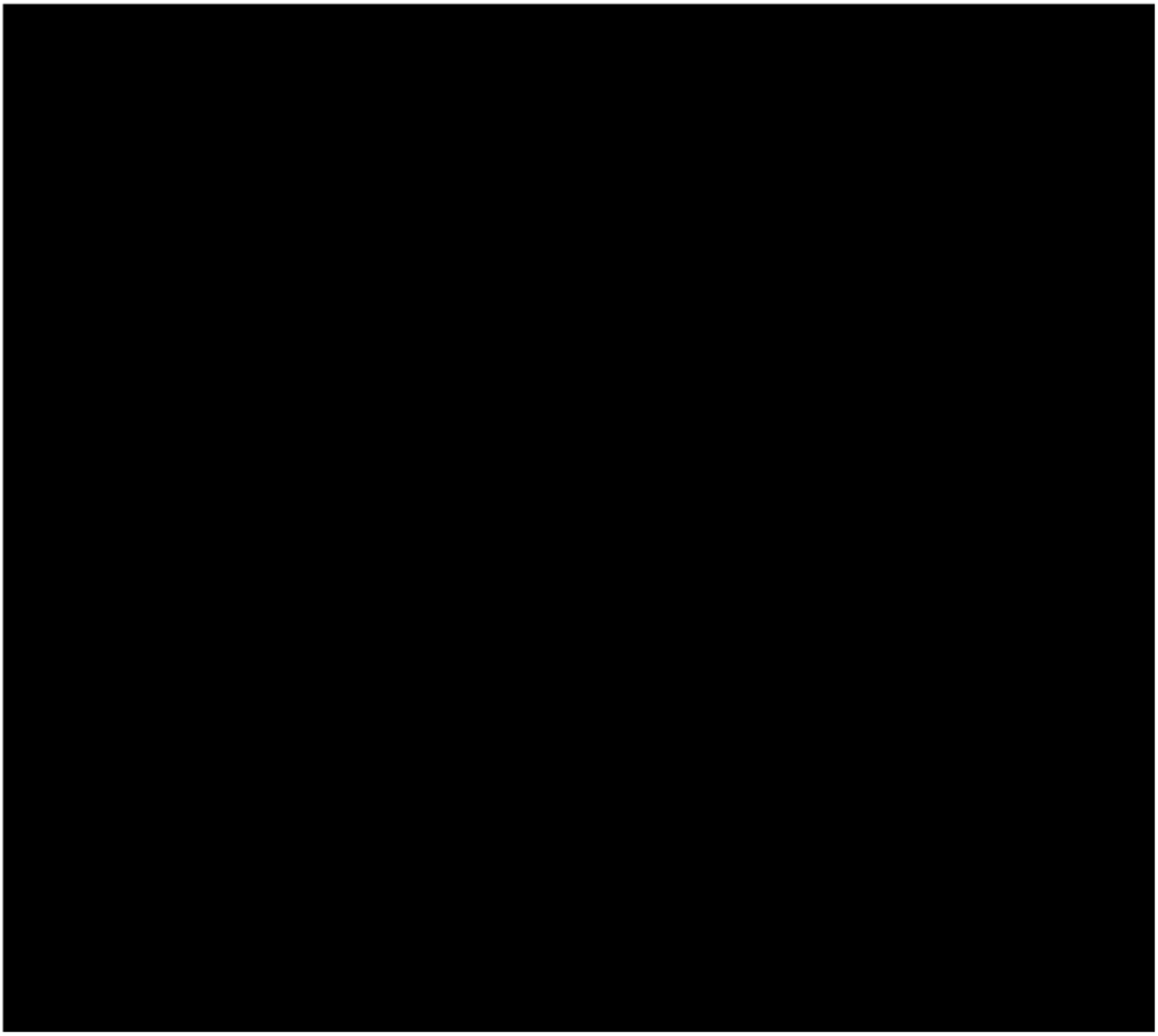
Therefore, I do not accept the claim that Fingal County Council is unduly beholden to daa for its income. Furthermore, the Council will be provided with the appropriate resources to undertake this additional role, ensuring it has the necessary tools to make evidence based decisions in relation to noise mitigation measures and noise related operating restrictions. Therefore, I have every confidence in the suitability and capacity of Fingal County Council to carry out this important role.

[redacted]

Joint Committee on Transport, Tourism and Sport

Wednesday, 03 October 2018

Briefing



[redacted]

Q Is the Department aware of the concerns of local residents that FCC will be conflicted in its role as Competent Authority? – Has the Department engaged with local residents on this issue?

No, the Department has not engaged directly with the residents in relation to the designation of Fingal County Council as the Competent Authority. However, as part of its responsibilities under the 2002 Environmental Noise Directive, Fingal County Council is currently undertaking public consultation in relation to its proposed Noise Action Plan for Dublin Airport.

As well as this, the General Scheme provides for a number of opportunities for public consultation which will allow local residents to express their views. Essentially, public consultation is provided for through every step of the process similar to what is provided for in the Planning process. As Competent Authority, the Council will be required to base its decision on operating restrictions on evaluation of the data by noise experts. Therefore, the Department is confident that it will be a fair and impartial process.

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[redacted]

[redacted]

[redacted]

7.2. Why was Fingal County Council chosen?

- Fingal County Council offered the best way forward, following discussions between this Department, the Department of Housing, Planning and Local Government and the Department of Communications, Climate Change and Environment, having regard to the requirements of Regulation 598.

- Fingal County Council already has responsibilities under an EU Environmental Noise Directive which encapsulates responsibilities relating to noise caused by conurbations and major transport infrastructures including roads, railways and airports.

- In addition, having regard to its planning functions, it has considerable experience and expertise in the conduct of environmental impact assessments, appropriate assessments and in managing extensive public consultations. There are therefore synergies arising from the assignment of this additional role.

7.3. Is Fingal County Council conflicted?

- The daa rates represent approximately 8% of Fingal County Council's overall budgeted income.

- The Council will be provided with the appropriate resources to undertake this additional role, ensuring it has the necessary tools to make evidence based decisions in relation to noise mitigation measures and noise related operating restrictions.

- Local Authorities already have a wide range of statutory based regulatory and enforcement functions. These relate to both the environment and planning and sit alongside their rate collection and property tax setting functions.

[redacted]

[redacted]

Aviation Safety and Security – Topical Q and As

Assistant Secretary: Fintan Towey
Principal Officer: Ronan Gallagher

Contents

[redacted]

An Roinn Iompair Turasóireachta agus Spóirt
Department of Transport, Tourism and Sport

Airport Noise Regulations 598/2014	Principal Officer: **Ronan Gallagher**
	Extension: [redacted]

When will the legislation be in place?

In July this year the Government approved outline draft Heads of Bill and confirmed the designation of Fingal County Council as the Competetent Authority with An Bord Pleanála as the Appeals Body. Since that time, my Department has been working closely with the Department of Housing, Planning and Local Government on drafting detailed Heads which culminated in the publication of a General Scheme on 28 September. Pre-legislative scrutiny was completed on 3 October and formal drafting of the Bill is underway. I intend to commence the enactment process in early November and to have the Bill passed through the Houses by the end of the year.

Why has it taken so long to implement the Regulation?

Implementing this new EU Regulation is a complex matter and unfortunately considerable work was undertaken in preparing legislation to designate the IAA as the Competent Authority. However, it became clear as a result of difficulties that arose during the legal drafting process and then arising from new European case law, that the IAA is not suitable.

While the delay was a disappointing turn of events, extensive consultation between the relevant stakeholders was carried out to identify an alternative approach. Once Government approved my proposal to designate Fingal County Council as the Competent Authority, my Department officials moved swiftly to prepare primary legislation as a matter of priority. Significant progress has now been made and I am hopeful that the legislation will be enacted by the end of the year.

Is the Minister satisfied that Fingal County Council is sufficiently independent to undertake this role in an impartial manner?

Fingal County Council already has responsibilities under the 2002 EU Environmental Noise Directive which encapsulates responsibilities relating to noise caused by conurbations and major transport infrastructures including roads, railways and airports.

Regulation 598 is an extension to that Directive and the legislation being prepared in my Department will align with existing Planning and Development Legislation which the Council would have considerable experience of in terms of conducting environmental impact assessments, appropriate assessments and in managing extensive public consultations. Therefore synergies arise from the assignment of this additional role.

I know approximately 8% of Fingal County Council's overall budgeted income is received through rates paid by daa and while that sum is not insignificant, I think it is unfair to suggest that this would in any way make the Council conflicted in its decision making.

Just as in a planning decision, a Local Authority assesses any application in accordance with the relevant legislation and this is the sole basis up on which, legally, the authority arrives at a decision.

Any possible financial benefit to the local authority from a statutory decision is merely consequential to the primary purpose of the local authority fulfilling its statutory role, for example a planning decision on commercial property that attracts rates over a resident property.

Is the Minister satisfied that Fingal County Council has the necessary expertise to undertake this role?

I can confirm that the draft legislation will include a provision for additional funding for Fingal to ensure that it will have the necessary resources to carry out airport noise regulation. This will enable Fingal County Council to recruit specialist staff, where necessary. There is no question of Fingal having to carry out this new function from within existing resource levels.

[redacted]

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[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Further Briefing Note for Public Representatives – November 2018
Aircraft Noise (Dublin Airport) Regulation Bill 2018

Fingal County Council as Competent Authority

The Role of Local Authorities

Fingal County Council, in line with the other 30 Local Authorities, has a range of responsibilities usually bound by statute. They are, for example, the Planning Authority and the Roads Authority, and each duty must be performed in a separate and distinct manner and in accordance with the relevant legislation. Decisions of local authorities may be subject to appeal and/ or Judicial Review.

Fingal County Council has a track record of performing the role of competent authority in areas such as planning and environmental and does so in an independent and transparent way. It is one of the largest local authorities in the country and has been dealing with a range of issues within and surrounding Dublin Airport for many years.

To suggest that Fingal County Council would be conflicted in its role as the Noise Regulator is to suggest that it is conflicted in all its statutory-based regulatory roles, be that planning, environmental or housing. In law, local authorities are entirely independent corporate entities, with full responsibility for the performance of their functions and the discharge of their responsibilities.

It is the strongly held and shared view of the Minister for Transport, Tourism and Sport and the Minister for Housing, Planning and Local Government that the proposal to designate Fingal County Council as the Noise Regulator for Dublin Airport is wholly in keeping with its broad and multi-functional regulatory and local service mandate.

Competency of Fingal County Council – Planning, Environmental Protection and Noise Regulation

The regulation of noise at Dublin airport will, invariably, be closely tied to development of the airport, either in respect of specific development projects or proposals for intensification of use, and in both respects there is extensive overlap with the planning process. Equally, there is a strong overlap with existing environmental protection requirements, including the appropriate application of the habitats directive.

Fingal County Council has extensive corporate experience and capacity in planning and development and in environmental assessments. Fingal - as is the case with all Local Authorities - deals with planning applications in accordance with the relevant planning legislation and case law (including with regard to development plans etc.) and, balancing a broad range of considerations, the authority arrives at a decision in an open and transparent manner.

Equally, Fingal - as is the case with all Local Authorities – has powers under the Environmental Protection Act to require measures to be taken to prevent or limit noise, and people can make complaints about noise nuisance to local authorities. Local authorities are also charged with carrying out noise mapping under the Environmental Noise Regulations 2006.

Furthermore, the application of Regulation 598 requires the capability for significant public consultation. Fingal County Council has significant administrative and technical expertise in running large public consultation programmes, for example - the adoption process for development plans, local area plans and noise action plans under the Environmental Noise Directive.

In view of the above there are significant organisational capacity benefits, administrative efficiencies and policy synergies from having Fingal as the Noise Regulator under Regulation 598.

In respect of any financial gain from a noise or planning decision, it is important to note that Local Government – as with national government – does not operate on a commercial mandate. Underpinning statutory functions are not driven by revenue generation for profit-making purposes. Moreover, it is not unusual for Local Authorities to be faced with considering proposals/ projects that have a range of implications for their administrative area.

All local authorities assess applications in accordance with the legislation and case law (including with regard to development plans etc…). Furthermore, with respect to planning decisions, there is a clear well established independent appeals mechanism in the shape of An Bord Pleánala, a system and process that members of the public actively engage with. This appeals mechanism is being applied to the noise regulation process too.

There is no direct financial benefit arising from noise regulation.

Resourcing

Fingal County Council will put in place the necessary resources to deliver a robust and independent regulatory regime, and there is provision for adequate funding to support this in the Bill. It will establish a noise regulation office within the executive branch.

In terms of capacity development in the area of noise regulation, under the Environmental Noise Regulations, SI 140 of 2006, Fingal County Council is already the designated action planning authority with responsibility for preparing a Noise Action Plan for Dublin Airport. The Council has engaged the services of an independent noise consultancy specialising in environmental noise assessment to assist in the delivery of this Plan. In addition, the Council has considerable experience and expertise in its planning functions and the conduct of environmental impact assessments, appropriate assessments and in managing extensive public consultations. It has a very solid foundation on which to build.

Financial Information

The Elected Members of Fingal County Council determine the annual rate on valuation (ARV) during the budget process based on the advice of the Chief Executive and the work of the corporate policy group.

The ARV for 2018 is .147, which when multiplied by the rateable valuation – which is determined by the Valuation Office – gives the annual rate bill. The daa rate demand for 2018 is €17.6 million, which represents 14.76% of the total commercial rates levied by Fingal County Council 2018, and around 8% of its total income.

The valuation of a rateable property is independently arrived at through the work of the Valuation Office. New rateable properties are valued following their completion while from time to time the Valuation Office carries out a County wide revaluation.

Department of Transport, Tourism and Sport
29 November 2018

Further Briefing Note for Public Representatives – November 2018
Aircraft Noise (Dublin Airport) Regulation Bill 2018

Comparison of competent authority options

A. Commission for Aviation Regulation (CAR):

Pros

- Satisfies the independence requirements of Article 3 of Regulation 598.
- Has existing regulatory role in respect of Dublin Airport (economic pricing) and experience in managing that process, which involves industry consultation and has regard to capital investment needs (including future development), growth forecast and a rate of return on investment (profit margin).

Cons

- No expertise or existing statutory remit in relation to environmental noise, environmental protection or planning and development – all of which are critical component parts of the Bill.
- No current capacity or experience of running the type of extensive public consultations required by Regulation 598.
- Considerable capacity constraints. Small, economic regulator with some additional consumer protection functions – 20 staff.
- Does not have organisational capacity to absorb a substantive new function within a relatively short timeframe.

B. Environmental Protection Agency (EPA):

Pros

- Satisfies the independence requirements of Article 3 of Regulation 598.
- Has a statutory remit in relation to environmental protection, albeit it is an oversight role to ensure compliance by State bodies under the Environmental Noise Directive in respect of noise maps and noise action plans produced by Local Authorities.

Cons

- It is the considered view that the regulatory requirements in Regulation 598 are very different to the licencing, audit, inspection role of the EPA. Represents a step change from what EPA is currently set up to do.
- Does not have relevant noise and planning related competencies.

- Does not have organisational capacity to absorb a substantive new function within a relatively short timeframe.

C. Fingal County Council:

Pros

- Satisfies the independence requirements of Article 3 of Regulation 598.
- Broad range of existing regulatory powers relevant to Regulation 598, including planning and development and environmental noise. Facilitates joined-up decision making.
- Specific existing powers and responsibilities for noise mapping and development of noise action plans at Dublin Airport in relation to the EU Environmental Noise Directive.
- Substantial experience in decision-making within a other similarly structure regulatory frameworks – e.g. planning.
- Capacity and expertise to support extensive public consultation required under Regulation 598.
- Has organisational capacity to absorb a substantive new function within a relatively short timeframe.

Cons

- Some resistance at local level on principle of Fingal Country Council.
- Expressed perception of conflict arising from proportion of total Council income that emanates from the commercial rates paid by daa (8%).

D. Irish Aviation Authority (IAA):

Pros

- Existing regulatory role in relation to aviation safety and security.
- Technical expertise in in relation to aviation generally and aircraft in particular arising from its regulatory/certification activity and commercial air traffic control activity.
- Has organisational capacity to absorb a substantive new function within a relatively short timeframe.
- Has experience in managing consultations.

Cons

- Does not clearly satisfy the independence requirements of Article 3 of Regulation 598. Benefits directly, and on a commercial basis, from increased aircraft activity at Dublin airport.
- No expertise or existing statutory remit in relation to environmental noise, environmental protection or planning and development – all of which are critical component parts of the Bill.

E. Minister for Transport, Tourism and Sport:

Pros

- Responsible for transport and tourism policy, including national aviation policy, which supports the long-term development of Dublin Airport, including a 2nd runway.

Cons

- Department of Transport responsible for regulatory policy and independent regulators responsible for regulatory decisions: National Transport Authority, Commission for Aviation Regulation, Road Safety Authority.
- Does not clearly satisfy the independence requirements of Article 3 of Regulation 598. Minister for Transport and Minister for Finance are shareholders in wholly owned state company, the daa. Receive dividend payments from daa.
- No technical aviation noise expertise, environmental noise expertise or planning expertise. Capacity building would be required from ground floor.

F. New Agency:

Pros

- Satisfies the independence requirements of Article 3 of Regulation 598.
- Provide a stand-alone, independent regulator.

Cons

- Considerable set-up costs and extended timeline to establish a new, functioning entity.
- Require building all expertise and organisational capability from ground floor.
- Regulatory role. A new agency would have difficulty in developing its capability to the tight timeline required.

Aircraft Noise (Dublin Airport) Regulation Bill 2018 - General Briefing

Tab 1	Independence of Fingal County Council and internal arrangements

[redacted]

1. The independence of Fingal County Council

- Fingal County Council, in line with the other 30 Local Authorities, has a range of responsibilities usually bound by statute. Each duty it has responsibility for must be performed in a separate and distinct manner and in accordance with the relevant legislation. Decisions of local authorities may be subject to appeal and/ or Judicial Review.

- Fingal County Council has a track record of performing the role of competent authority in a number of areas. It has extensive experience in planning and development; land-use planning and management; appropriate assessment; environmental impact assessment and managing large public consultations. It is one of the largest local authorities in the country and has been dealing with a range of issues within and surrounding Dublin Airport for many years.

- To suggest that Fingal County Council would be conflicted in its role as the Noise Regulator is to suggest that it is conflicted in all its statutory-based regulatory roles, be that planning, environmental or housing. In law, local authorities are entirely independent corporate entities, with full responsibility for the performance of their functions and the discharge of their responsibilities.

- It is the strongly held and shared view of the Minister for Transport, Tourism and Sport and the Minister for Housing, Planning and Local Government that the proposal to designate Fingal County Council as the Noise Regulator for Dublin Airport is wholly in keeping with its broad and multi-functional regulatory and local service mandate.

Internal Arrangements within Fingal County Council

Fingal County Council will put in place the necessary resources to deliver a robust and independent regulatory regime, and there is provision for adequate funding to support this in the Bill by way of a levy to be imposed on daa to cover any costs associated with the Regulator carrying out its functions under the Bill. I understand from Fingal County Council that it will establish a noise regulation office within the executive branch which will include the appropriate noise expertise to feed into any decision of the Noise Regulator. The office will sit within the existing organisational and governance structures within Fingal County Council, with all of the appropriate arrangements to ensure decisions are taken fully in accordance with the law, as happens in planning and development, for example. There is no conflict in its role as noise regulator and its other roles as a local authority. I have covered this issue extensively. The Council will have all the tools at its disposal to come to a decision in line with Regulation 598.

[redacted]

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Aircraft Noise (Dublin Airport) Regulation Bill 2018

Second Stage – Dáil Éireann

Wednesday 12 December 2018

Speech by Minister for Transport, Tourism and Sport,

Shane Ross TD

I would like to thank the House for the opportunity today to introduce the Aircraft Noise (Dublin Airport) Regulation Bill 2018.

Background

The main purpose of this Bill is to implement EU Regulation 598/2014, which came into effect in June 2016. Regulation 598 sets out the rules and procedures for managing and monitoring the impact of aircraft at all major European Union Airports. The approach set out in the Regulation is in line with the so-called "Balanced Approach" to aircraft noise mitigation, which has been developed by the United Nation's International Civil Aviation Organisation - ICAO.

This Bill follows the Regulation in its entirety and therefore represents best international practice in aircraft noise management at airports, as endorsed by the United Nations and the European Union.

It may seem unusual that I am implementing this Regulation through primary legislation, even though an EU Regulation has direct effect in Member States. Typically, I would be implementing such a Regulation by way of secondary legislation, through a Statutory Instrument. However, the circumstances surrounding this Regulation are atypical. There has been extensive policy and legal examination of how best to put in place a noise regulation regime which on the one hand - fully accords with Regulation 598 - and on the other hand – is wholly aligned with our existing planning and development and environmental frameworks. And the outcome of these deliberations was the conclusion that the only certain way to achieve this was by primary legislation. I have taken a lot of criticism for delaying or for not moving fast enough on this issue. And while I understand and share the frustration underlying some of this criticism, I must say some of it also betrays an under-appreciation of the complexity of the

issues that had to be worked through. I am glad to be now standing before this House to present this Bill, and I am glad that the Oireachtas will have the opportunity to examine it, discuss it, come to understand it and ultimately – I am sure – support it as the best available option which serves the national interest. I propose now to bring the House through the key elements of the Bill and explain the policy rationale underpinning it.

Designation of the Competent Authority

As a first step, Regulation 598 requires all Member States with a major airport to designate a Competent Authority as the independent Noise Regulator. The Competent Authority is responsible under the Regulation for monitoring the noise situation at a designated airport. The Competent Authority also decides on the appropriate noise mitigation measures that must be put in place by airport operators, up to and including operating restrictions to mitigate an identified noise problem.

Under the Bill, Fingal County Council is designated as the independent noise regulator for the purposes of Regulation 598. I firmly believe, given the complex issues we are dealing with, that Fingal County Council is best placed to undertake the role as Noise Regulator for Dublin Airport.

Rationale of Fingal County Council as the Noise Regulator

The extensive policy and legal examination of the Regulation – which I mentioned earlier – made it clear that there is a significant overlap between Regulation 598, the planning process and environmental protection requirements. In that respect, the Council, with its extensive experience in planning and development, in land-use planning and management, in appropriate assessment, in environmental impact assessment and indeed in managing large public consultations, is very well suited for the job at hand. That is why I have defended it in this House when others have questioned Fingal County Council's suitability for the job. I have also defended it against what I consider baseless accusations of conflict of interest. Fingal is not conflicted. I believe in the effectiveness of local

government by local authorities. I believe that giving Fingal County Council additional legal powers to regulate noise at Dublin Airport makes perfect sense, building on its functions relating to noise under the Environmental Noise Directive and the planning code generally. It is joined up public administration. It is empowering local Government; allowing a local authority to make local decisions. It is in the best interest of providing a readily accessible, fully transparent and locally accountable process for managing and monitoring noise at Dublin Airport.

Fingal County Council is one of the largest local authorities in the country. It has a highly skilled staff complement. It has existing relevant expertise and it has the wherewithal to develop and bring in more expertise as necessary. I reject the notion that it is not a good fit, and I reject the idea that local authorities can be conflicted in overseeing and providing local services and acting in a regulatory role.

All local authorities have a wide range of statutory-based regulatory functions, including environmental quality control, planning permissions, development planning, public lighting, road building and road maintenance. They have enforcement roles too, and of course they have powers to charge taxes and fees, including property tax, commercial rates and planning related fees. The fee raising and charging powers are to ensure that the statutory and other public services provided by local authorities are funded. It is not a commercial enterprise; this is not about turning a profit.

Local authorities charge what is needed to cover service costs, and in the context of its new noise regulation functions Fingal will do the same. Fingal County Council has a track record of performing the role of competent authority in areas such as planning and environment and does so in an independent manner. Its decisions are open and transparent and are subject to appeal and Judicial Review. This Bill is not breaking any new ground in this respect.

It is clear to me that the proposal in relation to the implementation of Regulation 598 is wholly aligned with the long established multi-functional role played by all local authorities. Moreover, any decision will be subject to an independent appeals process. I am confident when the Bill is examined more closely, it will become clear to all that given the close inter-relationship with the Planning and Development Act, and the current responsibilities already held by Fingal County Council under the Environmental Noise Directive, that the Council is the most suitable body to take on the role as noise regulator for Dublin Airport.

Council Resources

To be absolutely clear about the resourcing of this new function – which is a legitimate concern and one that has been expressed by a number of my colleagues in this House. It is true that Fingal County Council will have to build up capacity to fully undertake the role as Noise Regulator. It will have to procure noise expertise to assist in the application of the balanced approach and the decision making process. But it is building from a solid base in terms of the existing

in-house expertise and capacity to run a process – including the public consultation - as prescribed in the Bill. Funding will be made available to allow it to do this. It is intended that any costs will be met by a levy that the Competent Authority will impose on the daa.

The daa will be liable to pay this levy on a monthly, biannual or annual basis, as determined by the Competent Authority. It will be based on costs incurred by the Council, or reasonably expected to occur, in the performance of its functions as the Competent Authority.

Regular 598 Process – Adoption of the Balanced Approach

With regard to how the process set out in the Bill is intended to work, Fingal County Council already has responsibility for noise assessments under the 2002 Environmental Noise Directive. This Bill - in accordance with Regulation 598 - is an extension of that process.

The Bill sets out the procedure to be followed where a noise problem is identified at the airport following a noise assessment undertaken in line with the Environmental Noise Directive.

This entails undertaking an analysis of the various measures available to reduce noise. There are four high level options:

1. noise-reduction at source;
2. land-use planning and management;
3. noise abatement operational procedures; and
4. operating restrictions, as a last resort.

The goal is to address any noise problem in the most effective manner.

This analytical framework is called the "Balanced Approach," and it is set out in Regulation 598. It has been developed at the UN's International Civil Aviation Organisation as the best way forward to ensure that airports can develop in a more sustainable way, and that air connectivity can continue to be improved, as a key enabler of international trade and in the general interest of global access. What is proposed in this Bill, therefore, is an airport noise regulatory regime that has been developed as international best practice and adopted as EU law.

Having completed its analysis under the Balanced Approach, the Noise Regulator will come to a draft regulatory decision in relation to the noise mitigation measures and operating restrictions, if any, to be introduced at Dublin Airport. The Regulator will publish this draft decision and invite submissions and observations to be made within a period of 14 weeks. This open consultation is an important aspect of the Bill. The draft decision will be accompanied by a report detailing how the decision was reached, which will include a non-technical summary. This will ensure any individual will be in a position to input into the process and that the consultation will not be limited to those with technical expertise.

Once the public consultation process is complete, and having considered any submissions or observations received, the Noise Regulator will make a Final Decision. The Regulator will specify a timeframe for the introduction of such measures and in the case of operating restrictions, will provide at least six months' notice.

Amendments to the Planning and Development Act

The Bill also inserts new sections into the Planning and Development Act, to put in place a framework for the application of Regulation 598 requirements within the planning process. The purpose of this is two-fold:

1. Firstly, provision is made for the Noise Regulator to input into decisions of the Planning Authority in relation to planning applications for proposed development that may impact on the noise situation at the airport; and

2. Secondly, the Bill also provides for the ability of the airport authority to apply to the Planning Authority to review and amend any current operating restrictions in place at the airport as conditioned under a previous planning consent.

In both these circumstances, the Planning Authority is not permitted to make a final decision on the planning application until such time as the Noise Regulator has completed its work. This work will involve assessing the planning application using the Balanced Approach

framework and consulting with the Planning Authority and any other party it deems necessary. In line with normal 598 procedures, the Noise Regulator will also have to undertake a 14 week public consultation on proposed measures. Once the Noise Regulator notifies the Planning Authority of its regulatory decision, the Planning Authority will incorporate that regulatory decision, by way of planning conditions, into its final decision on the planning application.

Current Runway Restrictions on New Runway

It is well documented that daa views the operating restrictions attached to the permission for the second runway as overly restrictive. On completion of construction of the second runway, those restrictions will immediately impact and reduce current operations at the airport. The restrictions were decided upon in advance of Regulation 598 coming into force, and therefore it makes sense that they are now reviewed in light of the Balanced Approach process, in advance of their introduction. The Bill does not pre-empt any decision that may be made by the Noise Regulator on the appropriateness of those restrictions. However, it does allow the

Noise Regulator to examine all noise mitigation measures available, in line with the Balanced Approach, in order to mitigate any noise problem that may arise from the operation of the second runway.

Once it examines any application to review the operating restrictions attached to the second runway project, the Noise Regulator will come to a determination. It may decide that no change is needed to the current operating restrictions. It may decide that more onerous restrictions are required, or it may determine that a new set of noise abatement measures entirely are more appropriate. That will be a matter for the New Regulator to decide, based on expert technical analysis, reference to best international practices and emerging technology, and extensive public consultation.

Integration with the planning process

The Bill sets out, in a detailed way, how the noise regulation is to dovetail with the planning process. This is important because it means that airport use and airport development will, into the future, be subject to a more robust, interconnected regulatory regime that

tests development proposals against planning and development benchmarks and now noise impact and noise management benchmarks. To that end, the Bill provides that the Planning Authority must first consult with the Noise Regulator in relation to development at the airport that may have a noise dimension. This will facilitate the Noise Regulator in applying the Balanced Approach before reaching a decision on the application of any operating restrictions, as may be needed, to be incorporated into the final planning decision. Likewise, where there is a planning application to review current operating restrictions, the Noise Regulator will decide upon the most appropriate measures in line with Regulation 598.

Designation of an appeals body and the appeals process

A further requirement of Regulation 598 is to designate an appeals body in order to provide for an appeals mechanism to a decision of the Noise Regulator. Again, to provide for alignment with the Planning and Development Act, the Bill designates An Bord Pleanála as the independent appeals body. This decision will ensure cohesion

in any future planning decisions in relation to development at Dublin Airport.

All regulatory decisions of the Noise Regulator are subject to appeal to An Bord Pleanála. Where an appeal to a regulatory decision of the Noise Regulator is made to the Board, it will have 18 weeks to make a decision, with provision to extend this timeline if required. Provision has also been made for the Board to, at its discretion, undertake a 14 week public consultation process. This may happen where the Board is of the view that there are alternative noise mitigation measures or operating restrictions, other than those proposed by the Noise Regulator, which may be implemented at the airport and were not consulted on previously. In assessing any such appeal, the Board will gain all of the powers of the Noise Regulator and must adopt the Balanced Approach in consideration of the measures to be imposed.

Where a noise regulatory decision is made as part of an overall planning decision, that can also, of course, be appealed to An Bord

Pleanála, as part of an appeal of the planning decision. Where a planning decision which the Noise Regulator has had input into, is appealed to the Board, once again the Board will assume all of the powers of the Noise Regulator. It will have the power to decide on the most appropriate noise mitigation measures and operating restrictions, if any, that are to be introduced at Dublin Airport and set out the timelines for their implementation.

Monitoring and enforcement

Another aspect of the Bill relates to monitoring and enforcement powers. There will be an onus on the airport authority to ensure that it adheres to any decision of the Noise Regulator and that any measures are implemented effectively. The airport authority will be required to produce an annual compliance report, to include a non-technical summary. This report will be published by the Regulator. The Regulator will monitor compliance and has the power to direct the airport authority and airport users, as necessary, to comply with any noise mitigation measures and operating restrictions with recourse to the High Court for non-compliance.

Declassification of airports as strategic infrastructure development

The Bill also outlines other consequential amendments to the Planning and Development Act. One such amendment is the declassification of airport development as strategic infrastructure development (SID) for the purposes of planning applications. This measure will mean that an application for planning permission for development at airports will be made to the local authority in the first instance, with provision for appeal to An Bord Pleanála.

This amendment is necessary as it would not be possible for An Bord Pleanála to be both the deciding body and the appeals body for development at the airport which will have a significant noise impact.

Conclusion

Ultimately, Regulation 598 is intended to ensure that major European airports are developed in a sustainable manner. That they are subject to oversight and scrutiny, not just in terms of planning and environmental laws, but in the case of airports specifically, noise levels. This Bill provides for this. It sets out a robust, rigorous and

transparent noise regulation regime that will ensure that Dublin Airport can grow, but only in a way that is responsive to the impact of noise caused by aircraft. That means it will have to comply with regulatory decisions on how aircraft approach and depart the airport – for example – on how and when they can move around the airport, on the type of aircraft and engines preferred. All of these things now form part of the decision making around the long term development of Dublin Airport. It is a much more comprehensive management and monitoring framework than currently exists. Whilst I fully understand that there are local concerns, equally I am confident that this new regime will come to be seen as a very positive step forward.

This Bill therefore sets out a noise regulation regime that has not been in place before, allowing for full stakeholder engagement. It also sets out an independent appeals process which will provide certainty to stakeholders and a framework for managing the process in a fair and balanced way. In essence, the Bill provides for a structured approach to assessing and addressing aircraft noise at Dublin Airport with the

objective of facilitating airport development and expansion in a way that minimises, as far as practicable, the noise impact of that expansion.

I commend the Bill to the House.

Aircraft Noise (Dublin Airport) Regulation Bill 2018

Dáil Éireann – Second Stage

Wednesday 12 December 2018

Concluding Remarks by Minister for Transport, Tourism and Sport,

Shane Ross TD

[redacted]

[redacted]

Possible topics raised by deputies:

Independence of Fingal County Council

I know concerns have been raised about the perceived conflict of interest Fingal County Council has due to the rates it receives from the daa. I would once again like to reiterate that I reject this argument. Yes, daa pays commercial rates to Fingal County Council but I do not accept that this would somehow influence the council in its role as independent noise regulator. Any decision to be made by the Council in this role will evidenced-based and fully in adherence with the requirements of the EU Regulation. If it is anything other than this is will clearly be susceptible to challenge under the appeals process or judicial review. Stakeholder engagement has been provided for at every stage. I believe once Deputies have had a chance to fully examine each section of the Bill at Committee stage, their concerns with regard to any perceived conflict will be allayed.

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[redacted]

[redacted]

[redacted]

Aircraft Noise (Dublin Airport) Regulation Bill 2018

Section by Section Briefing Notes

16 January 2019

BRIEFING NOTE

[redacted]

BRIEFING NOTE

[redacted]

BRIEFING NOTE

[redacted]

Section 3 – Designation of the Competent Authority

Independence of Fingal County Council

Fingal County Council, in line with the other 30 Local Authorities, has a range of responsibilities usually bound by statute. Each duty it has responsibility for must be performed in a separate and distinct manner and in accordance with the relevant legislation. Decisions of local authorities may be subject to appeal and/ or Judicial Review.

Fingal County Council has a track record of performing the role of competent authority in a number of areas. It has extensive experience in planning and development; land-use planning and management; appropriate assessment; environmental impact assessment and managing large public consultations. It is one of the largest local authorities in the country and has been dealing with a range of issues within and surrounding Dublin Airport for many years.

To suggest that Fingal County Council would be conflicted in its role as the Noise Regulator is to suggest that it is conflicted in all its statutory-based regulatory roles, be that planning, environmental or housing. In law, local authorities are entirely independent corporate entities, with full responsibility for the performance of their functions and the discharge of their responsibilities.

It is the strongly held and shared view of the Minister for Transport, Tourism and Sport and the Minister for Housing, Planning and Local Government that the proposal to designate Fingal County Council as the Noise Regulator for Dublin Airport is wholly in keeping with its broad and multi-functional regulatory and local service mandate.

BRIEFING NOTE

Internal Arrangements within Fingal County Council

Fingal County Council will put in place the necessary resources to deliver a robust and independent regulatory regime. There is provision for adequate funding to support this in the Bill by way of a levy to be imposed on daa to cover any costs associated with the Regulator carrying out its functions under the Bill.

I understand from Fingal County Council that it will establish a noise regulation office within the executive branch which will include the appropriate noise expertise to feed into any decision of the Noise Regulator. The office will sit within the existing organisational and governance structures within Fingal County Council, with all of the appropriate arrangements to ensure decisions are taken fully in accordance with the law, as happens in planning and development, for example. There is no conflict in its role as noise regulator and its other roles as a local authority. I have covered this issue extensively. The Council will have all the tools at its disposal to come to a decision in line with Regulation 598.

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Aircraft Noise (Dublin Airport) Regulation Bill 2018

- EU Regulation 598/2014 concerning noise related operating restrictions at EU Airports entered into effect 13 June 2016.

- The Regulation provides for a structured approach to mitigating problems arising from aircraft noise at airports. It entails the application of the "Balanced Approach" developed by the International Civil Aviation Organisation (ICAO), the UN body that develops rules and guidance for civil aviation. The "Balanced Approach" provides for consideration of a range of measures to mitigate aircraft noise problems in the vicinity of airports including, as a last resort, the imposition of operating restrictions.

- In November last year, Government approved the publication of the Aircraft Noise (Dublin Airport) Regulation Bill, 2018 in order to implement EU Regulation 598/2014.

- The Bill designates Fingal County Counsel as the Competent Authority (the Noise Regulator) and An Bord Pleanála as the appeals body.

- The Bill sets out the process for the introduction of noise mitigation measures at Dublin Airport where they are required to address an identified noise problem at Dublin Airport.

- The Bill also provides the ability for the airport authority to apply, through the planning process, for a review of the operating restrictions attached to the planning permission for the new second runway.

- This will entail the Noise Regulator applying the balanced approach in consideration of an application and working in parallel with the Planning Authority. Any such review may result in no change to the operating restrictions which will come into force when the new runway opens, it may result in more onerous restrictions or it may result in a new set of noise abatement measures which will have the same outcome. That will be a matter for the new Noise Regulator.

- In summary, the Bill provides for a legislative framework for noise impacts and noise management, and it integrates this with existing environmental and planning and development laws and procedures. The regulatory process conceived in Regulation 598 and reflected in this Bill is evidence-based and transparent, is subject to public consultation, and it includes provision for a robust appeals process.

- The Bill is currently at Committee Stage which commenced last week on 16 January and will continue today (23 January).

- It is hoped to have the Bill enacted by the end of February.

- There has been opposition to the designation of Fingal County Council as the Competent Authority, in particular with regard to a perceived conflict of interest in terms of the rates payable to the Council by the airport authority. The Minister spoke extensively on the issue at committee stage last week. Fingal County Council, in line with other local authorities has a number of statutory roles such as planning and the environment, all of which may give rise to an income stream. The Department is confident that any decision made by the Competent Authority will be transparent and evidenced based. It will be open to appeal and subject to Judicial Review.

Further Commentary on Fingal Structures and Governance issue

There is broad consensus that the noise legislation is critically important, deals with a highly complex and high profile public policy issue, and stakeholder interests are such that it is anticipated that any weaknesses or frailties will be tested in the Courts. The preparation of the Bill has always proceeded on the basis that any enactment must provide a solid and proven administrative structure that can deal with noise fully in accordance with Regulation 598 and, as is required, ensure effective interaction with existing planning, development and environmental laws and regulatory frameworks.

Fingal was chosen as the Competent Authority because it has relevant expertise relating to planning, environmental matters and public consultation - as well as the critical mass to quickly absorb, skill-up and roll out a new function effectively. As it is a Government body that does not operate to a commercial mandate – but rather operates within well-established statute, agreed national policy parameters and local development frameworks - the issue of a conflict of interest does not arise. It follows that there is no reason to create additional legislative protections around the exercise of noise regulation roles beyond what is already in place, including the proposed new reporting and audit provisions.

Specifically on the matter of independence, there is no legal uncertainty around Fingal's independence in regard to Regulation 598/2014. The independence of Fingal County Council as regards Regulation 598 has been tested legally, and it is clear that there are no legal grounds for considering that Fingal County Council is in any way conflicted. The approach in the Bill is unequivocally in accordance with Preamble (13) of Regulation 598/2014:

> *"The **competent authority** responsible for adopting noise-related operating restrictions should be **independent** of any organisation involved in the **airport's operation**, **air transport** or **air navigation service** provision, or representing the interests thereof and of the **residents** living in the vicinity of the airport. This should **not be understood as requiring** Member States to **modify their administrative structures or decision-making procedures**."*

In regard to the merits of relying on established Local Government structures, the strategic decision underpinning the choice of Fingal County Council was very much informed by a recognition of the benefits – for all parties – of providing for noise regulation the very same known, tried and tested administrative structures and processes which support planning and development – e.g. within local government, applying the approach to public consultation, appeals, and application of environmental assessments. Doing so offered the best means of securing a robust and rigorous process, one that could be relied on to deliver an informed decision and one that could also be reasonably considered to offer the best chance of defence in the event of legal challenge. At all stages of the process to structure the Bill, intensive legal and policy discussions and decisions were made around this very important principle: Where possible, use governance structures and decision making procedures that are already in place in order to maximise robustness.

The proposed introduction of specific, new requirements for independence in relation to a person or an office within Fingal undermines the advantages of assigning the role to Fingal and adds substantial complexity and legal risk for no benefit. It also undervalues the existing

checks and balances in the Bill: performance and actions are governed by EU and national law, An Bord Pleanála has full step-in regulatory powers under appeal, judicial review.

The standard governance model that operates within Local Authorities is provided for under the Local Government Act 2001 (as amended), including.

- **Section 63(3)**: Subject to law, a local authority is independent in the performance of its functions.

- **Section 149 : (3)** For the purposes of discharging the responsibilities set out under subsection (2), the chief executive shall—

  (a) exercise and perform in respect of each local authority for which he or she is the chief executive, the executive functions of such local authority (including all functions in relation to the employees of each such local authority), and

  (b) for that purpose carry on and manage and control generally the administration and business of the authority.

  (4) Every function of a local authority which is not a reserved function is, for the purposes of this Act, an executive function of such local authority.

- **Section 159 (1):** The manager shall for the purposes of discharging the responsibilities set out under *section 149* make such staffing and organisational arrangements as may be necessary for the purposes of carrying out the functions of the local authorities for which he or she is responsible.

These statutory provisions are underpinned by robust procedural documents and protocols and represent, when taken together, a very strong governance, accountability and responsibility framework. The FF amendment has the effect of introducing a completely new local government organisational and governance structure and framework that runs against the Local Government Act as it applies to all other regulatory functions assigned to Local Authorities. That in itself represents a legal risk and a point of potential challenge. The amendment is also, inadequate in terms of providing a basis for establishing a new local government organisational and governance structure and framework.

Taking all this together, the proposed amendment undermines the coherence of the appointment as Fingal as Competent Authority. While it would have to consider the matter, it is unlikely that the Government could allow the Bill to proceed on that basis.

Department of Transport, Tourism and Sport
8 February, 2019